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Paper No. 7

In re Application of	:	DECISION ON PETITION
Florent Bergeron	:	TO WITHDRAW
Serial No. : 09/695,272	:	HOLDING OF
Filed : October 25, 2000	:	ABANDONMENT
For : Mechanical Device Used to Make Different Exercises :		
On Ground		

This is a decision on a communication submitted to the Customer Service Center of Technology 3700 on July 22, 2003, that is being treated as a request to review the holding of abandonment mailed June 27, 2002, for failure to respond to the Office action mailed December 20, 2001. There is no fee required for this petition.

The communication is taken as an allegation that the Office action mailed December 20, 2001 was not received by applicant as the submission merely included a copy of a one page document that was signed May 31, 2001 (and presumably mailed to the Office on or about that date), which document notifies the Office of a correspondence address change. Unfortunately, the paper in question, if received by the Office, was never matched with the instant file, as it does not include the required identifying information, placed on the top page in a conspicuous location, such as the application number, or the serial number and filing date assigned to the application. See 37 CFR 1.5(a) and section 502 of the MPEP. It is also noted that all letters directed to the Office should state the name of applicant, the title of the invention, the date of filing the same, and if known, the group art unit or other unit within the Office responsible for considering the letter and the name of the examiner or other person to which it has been assigned. Under the above circumstances, as the proper procedures were not followed by applicant in notifying the Office of a correspondence address, the holding of abandonment would not be withdrawn and a petition to revive the application under 37 CFR 1.137 would be required.

As stated earlier, abandonment occurred as a result of applicant's failure to reply to an Office action mailed December 20, 2001 (copy attached for applicant's records). The Office action, a Notice of Non-Compliant Amendment (37 CFR 1.121) (hereinafter the "notice") indicated that applicant's response filed October 1, 2001 had not been submitted in the format required under 37 CFR 1.121 in effect at that time. Specifically, it stated that neither a clean version nor a marked-up version of the amended claims was submitted. However, a review of the amendment filed September 26, 2001 (not October 1, 2001 as the notice indicates) reveals that there is a clean version and a marked-up version of the claims. Accordingly, the issuance of the notice was in error and is hereby vacated. As the notice has been vacated, the holding of abandonment is hereby withdrawn.

Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner to have the amendment of September 26, 2001 processed and thereafter, to the examiner for consideration of the amendment. It is also noted that the records of the Office have been changed to reflect applicant's new correspondence address.

Summary: Petition to withdraw holding of abandonment granted.



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Attachment: copy of Office action mailed December 20, 2001.

ak/6/3/04